

CHAPTER NO. 680

HOUSE BILL NO. 2846

By Representatives Tidwell, Ridgeway, Rinks, Givens, Walker, White, Jackson, Fraley, Bone, McDonald, McCord, Stulce, Bittle, Scroggs, McAfee

Substituted for: Senate Bill No. 3025

By Senators Cooper, Springer, Fowler, Kurita, Burks

AN ACT to amend Tennessee Code Annotated, Title 69, Chapter 3, Part 1, relative to stop work orders issued when certain silvicultural activities have polluted waters of the state as a result of an operator's or owner's failure or refusal to use forestry best management practices.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated Section 69-3-103 is amended by adding the following:

() "Forestry best management practices" means those land and water resource conservation measures that prevent, limit, or eliminate water pollution for forest resource management purposes, as provided in rules hereinafter promulgated in accordance with Tennessee Code Annotated, Section 11-4-301(d)(18). Until those rules are effective, "forestry best management practices" will be those which have been developed by the Division of Forestry of the Department of Agriculture. The Commissioner of Agriculture shall specifically identify these interim forestry best management practices prior to September 1, 2000.

() "silvicultural activities" means those forest management activities associated with the harvesting of timber and including without limitation the construction of roads and trails.

() "operator" as used in the context of silvicultural activities, means any person(s) that conducts or exercises control over any silvicultural activities; provided, however, that the term "operator" shall not include an owner if the silvicultural activities are being conducted by an independent contractor.

() "owner" as used in the context of silvicultural activities, means any person(s) that owns or leases land on which silvicultural activities occur or owns timber on land on which silvicultural activities occur.

() "stop work order" means an order issued by the Commissioner of Environment and Conservation requiring the operator to immediately cease part or all silvicultural activities.

SECTION 2. Tennessee Code Annotated Title 69, Chapter 3, Part 1 is amended by adding the following new section:

Section _____. When certain silvicultural activities have polluted waters of the state as a result of an operator's failure or refusal to use forestry best management practices, the Commissioner of Environment and Conservation may issue a stop work order to the operator. If the owner is different than the operator, the Commissioner shall at the same time notify the owner that a stop

work order has been issued to the operator by delivering a copy of the stop work order to the owner. The stop work order requires that the operator must cease part or all of the silvicultural activities on site that are contributing to such pollution. The stop work order will remain in effect until the operator installs forestry best management practices that eliminate and prevent further pollution associated with the silvicultural activities. No stop work order may be issued or suspended without consultation with the Commissioner of Agriculture.

SECTION 3. Tennessee Code Annotated Title 69, Chapter 3, Part 1 is further amended by adding the following language as a new section to be appropriately designated:

Section _____. No operator, who at any time within the previous two (2) years, has been found to have violated this part in the conduct of silvicultural activities, such finding of violation not having been overturned or reversed on appeal, shall start any silvicultural activities unless the operator at least ten (10) days prior thereto has filed a written notification with the Commissioner of Agriculture and the Commissioner of Environment and Conservation including the following information:

- (1) The name and address of the operator and, if different than the owner, the name and address of the owner;
- (2) The location of the silvicultural activities and estimated acreage; and
- (3) The anticipated beginning date and anticipated length of the silvicultural activities.

SECTION 4. Tennessee Code Annotated Title 69, Chapter 3, Part 1 is further amended by adding the following language as a new section to be appropriately designated:

Section _____. A written request for a hearing before the Water Quality Control Board on the stop work order must be filed by the operator to the Commissioner of Environment and Conservation within thirty (30) days of receipt of notice. If a hearing is requested, the operator shall also be afforded the opportunity to meet with the Commissioner of Environment and Conservation or, at the Commissioner's option, the deputy or assistant commissioner, within three (3) working days after the hearing request is filed to discuss the alleged violation and show cause why a stop work order should not have been issued. Any modification or revocation of the stop work order shall be in writing. If the Commissioner or such designee upholds the stop work order, it shall remain in effect until resolution of the appeal or the operator comes into compliance. If no request for hearing is made within thirty (30) days of the receipt of notice, the stop work order becomes final and not subject to review.

SECTION 5. Tennessee Code Annotated Title 69, Chapter 3, Part 1 is further amended by adding the following language as a new section:

Section _____. Failure of an operator to give the notice required by section 3 or to comply with a stop work order issued pursuant to sections 2 and 4 shall subject the operator to the penalties in Tennessee Code Annotated, Section 69-3-115(a)(1)(E).

SECTION 6. Except as provided in the definition of forestry best management practices in Section 1 of this act, the Water Quality Control Board will promulgate rules to implement the purposes of this act including criteria and procedures for issuance of a stop work order. The Commissioner shall not delegate his or her authority to issue stop work orders. The proposed rules will be presented to the Water Quality Control Board for commencing the formal rulemaking process no later than September 1, 2000.

SECTION 7. Notwithstanding any provisions of this act to the contrary, Tennessee Code Annotated, Section 69-3-120(g) will apply to this act.


SECTION 8. This act shall take effect upon becoming a law for the purpose of rule promulgation and September 1, 2000, for all other purposes, the public welfare requiring it.

PASSED: April 10, 2000


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 25th day of April 2000


DON SUNDQUIST, GOVERNOR